

ASSEMBLY BILL

No. 2716

Introduced by Assembly Member Ma

February 22, 2008

An act to amend Sections 226, 233, and 234 of, and to add Article 1.5 (commencing with Section 245) to Chapter 1 of Part 1 of Division 2 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2716, as introduced, Ma. Employment: paid sick leave.

Existing law authorizes employers to provide their employees paid sick leave.

This bill would provide that an employee who works in California for 7 or more days in a calendar year is entitled to paid sick time, which shall be accrued at a rate of no less than one hour of paid sick time for every 30 hours worked. An employee would be entitled to use accrued sick time beginning on the 90th calendar day of employment. The bill would require employers to provide paid sick time, upon the request of the employee, for diagnosis, care, or treatment of health conditions of the employee or an employee's family member, or for leave related to domestic violence or sexual assault. An employer would be prohibited from discriminating or retaliating against an employee who requests paid sick time. The bill would require employers to satisfy specified posting and notice, and recordkeeping requirements. The bill would also make conforming changes.

This bill would require the Department of Industrial Relations to administer and enforce these requirements, including the promulgation of regulations, investigation, mitigation, and relief of violations of these requirements. This bill would authorize the department to impose

specified administrative fines for violations and would authorize the department, the Attorney General, or a person or entity acting on behalf of the public to bring an action to recover specified civil penalties against an offender, as well as attorney's fees, costs, and interest.

The bill would specify that it does not apply to employees covered by a collective bargaining agreement that provides for paid sick leave, nor does it lessen any other obligations of the employer to employees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Nearly every worker in the State of California will at some
- 3 time during the year need some time off from work to take care
- 4 of his or her own health or the health of family members.
- 5 (b) Many workers in California do not have any paid sick days,
- 6 or have an inadequate number of paid sick days, to care for their
- 7 own health or the health of family members.
- 8 (c) Low-income workers are significantly less likely to have
- 9 paid sick time than other workers.
- 10 (d) Providing workers time off to attend to their own health care
- 11 and the health care of family members will ensure a healthier and
- 12 more productive workforce in California.
- 13 (e) Paid sick days will have an enormously positive impact on
- 14 the public health of Californians by allowing sick workers paid
- 15 time off to care for themselves when ill, thus lessening their
- 16 recovery time and reducing the likelihood of spreading illness to
- 17 other members of the workforce.
- 18 (f) Paid sick days will allow parents to provide personal care
- 19 for their sick children. Parental care ensures children's speedy
- 20 recovery, prevents more serious illnesses, and improves children's
- 21 overall mental and physical health.
- 22 (g) Providing paid sick days is affordable for employers and
- 23 good for business.
- 24 (h) Employers who provide paid sick days enjoy greater
- 25 employee retention and reduce the likelihood of employees' coming
- 26 to work sick. Studies have shown that costs of decreased
- 27 productivity caused by sick workers exceed the cost of employee
- 28 absenteeism.

1 (i) Many adults have significant elder care responsibilities
2 requiring them to take time off from work or to work reduced
3 hours.

4 (j) Employees frequently lose their jobs or are disciplined for
5 taking sick days to care for sick family members or to recover
6 from their own illnesses.

7 (k) Workers whose jobs involve significant contact with the
8 public, such as service workers and restaurant workers, are very
9 unlikely to have paid sick days. Often, these workers have no
10 choice but to come to work when they are ill, thereby spreading
11 illness to coworkers and customers.

12 (l) Domestic violence, sexual assault, and stalking affect many
13 persons without regard to age, race, national origin, sexual
14 orientation, or socioeconomic status.

15 (m) Domestic violence is a crime that has a devastating effect
16 on families, communities, and the workplace. It impacts
17 productivity, effectiveness, absenteeism, and employee turnover
18 in the workplace. The National Crime Survey estimates that
19 175,000 days of work each year are missed due to domestic
20 violence.

21 (n) Survivors of domestic violence, sexual assault, and stalking
22 may be vulnerable at work when trying to end an abusive
23 relationship because the workplace may be the only place where
24 the perpetrator knows to contact the victim. Studies show that up
25 to one-half of domestic violence victims experience job loss. Forty
26 percent reported on-the-job harassment. Nearly 50 percent of sexual
27 assault survivors lose their jobs or are forced to quit in the
28 aftermath of the assaults.

29 (o) Affording survivors of domestic violence, sexual assault,
30 and stalking paid sick days is vital to their independence and
31 recovery.

32 SEC. 2. In enacting this act, it is the intent of the Legislature
33 to do the following:

34 (a) Ensure that workers in California can address their own
35 health needs and the health needs of their families by requiring
36 employers to provide a minimum level of paid sick days including
37 time for family care.

38 (b) Decrease public and private health care costs in California
39 by enabling workers to seek early and routine medical care for

1 themselves and their family members and to address domestic
2 violence or sexual assault.

3 (c) Protect employees in California from losing their jobs while
4 they use sick days to care for themselves or their families.

5 (d) Provide economic security to employees in California who
6 take time off work for reasons related to domestic violence or
7 sexual assault.

8 (e) Safeguard the welfare, health, safety, and prosperity of the
9 people of and visitors to California.

10 SEC. 3. Section 226 of the Labor Code is amended to read:

11 226. (a) ~~Every~~ *An* employer shall, semimonthly or at the time
12 of each payment of wages, furnish ~~to each of his or her employees~~
13 *employee*, either as a detachable part of the check, draft, or voucher
14 paying the employee's wages, or separately ~~when if~~ wages are paid
15 by personal check or cash, an accurate itemized statement in writing
16 showing (1) gross wages earned, (2) total hours worked by the
17 employee, ~~except for any employee whose~~ *unless the employee's*
18 compensation is solely based on a salary and ~~who the employee is~~
19 exempt from payment of overtime under subdivision (a) of Section
20 515 or any applicable order of the Industrial Welfare Commission,
21 (3) the number of piece-rate units earned and any applicable piece
22 rate if the employee is paid on a piece-rate basis, (4) all deductions,
23 provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee
26 is paid, (7) the name of the employee and his or her social security
27 number, except that by January 1, 2008, only the last four digits
28 of his or her social security number or an employee identification
29 number other than a social security number may be shown on the
30 itemized statement, (8) the name and address of the legal entity
31 that is the employer, (9) *paid sick leave accrued and used pursuant*
32 *to Article 1.5 (commencing with Section 245), and* ~~(9)~~ (10) all
33 applicable hourly rates in effect during the pay period and the
34 corresponding number of hours worked at each hourly rate by the
35 employee. The deductions made from payments of wages shall be
36 recorded in ink or other indelible form, properly dated, showing
37 the month, day, and year, and a copy of the statement or a record
38 of the deductions shall be kept on file by the employer for at least
39 three years at the place of employment or at a central location
40 within the State of California.

1 (b) An employer that is required by this code or any regulation
2 adopted pursuant to this code to keep the information required by
3 subdivision (a) shall afford current and former employees the right
4 to inspect or copy the records pertaining to that current or former
5 employee, upon reasonable request to the employer. The employer
6 may take reasonable steps to assure the identity of a current or
7 former employee. If the employer provides copies of the records,
8 the actual cost of reproduction may be charged to the current or
9 former employee.

10 (c) An employer who receives a written or oral request to inspect
11 or copy records pursuant to subdivision (b) pertaining to a current
12 or former employee shall comply with the request as soon as
13 practicable, but no later than 21 calendar days from the date of the
14 request. A violation of this subdivision is an infraction.
15 Impossibility of performance, not caused by or a result of a
16 violation of law, shall be an affirmative defense for an employer
17 in any action alleging a violation of this subdivision. An employer
18 may designate the person to whom a request under this subdivision
19 ~~will~~ *should* be made.

20 (d) This section does not apply to any employer of any person
21 employed by the owner or occupant of a residential dwelling whose
22 duties are incidental to the ownership, maintenance, or use of the
23 dwelling, including the care and supervision of children, or whose
24 duties are personal and not in the course of the trade, business,
25 profession, or occupation of the owner or occupant.

26 (e) An employee suffering injury as a result of a knowing and
27 intentional failure by an employer to comply with subdivision (a)
28 is entitled to recover the greater of all actual damages or fifty
29 dollars (\$50) for the initial pay period in which a violation occurs
30 and one hundred dollars (\$100) per employee for each violation
31 in a subsequent pay period, not exceeding an aggregate penalty of
32 four thousand dollars (\$4,000), and is entitled to an award of costs
33 and reasonable attorney's fees.

34 (f) A failure by an employer to permit a current or former
35 employee to inspect or copy records within the time set forth in
36 subdivision (c) entitles the current or former employee or the Labor
37 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
38 penalty from the employer.

(g) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(h) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall, by January 1, 2008, use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number on the itemized statement provided with the check, draft, or voucher.

SEC. 4. Section 233 of the Labor Code is amended to read:

233. (a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's ~~then-current~~ *then-current* rate of entitlement, to attend to an illness of a child, parent, spouse, or domestic partner of the employee. All conditions and restrictions placed by the employer upon the use by an employee of sick leave also shall apply to the use by an employee of sick leave to attend to an illness of his or her child, parent, spouse, or domestic partner. This section does not extend the maximum period of leave to which an employee is entitled under *Article 1.5 (commencing with Section 245) of this chapter*, Section 12945.2 of the Government Code, or ~~under~~ the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

(1) "Child" means a biological, foster, or adopted child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing in loco parentis.

(2) "Employer" means ~~any~~ *a* person employing another under ~~any~~ *an* appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(3) "Parent" means a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

1 (4) (A) “Sick leave” means accrued increments of compensated
2 leave provided by an employer to an employee as a benefit of the
3 employment for use by the employee during an absence from the
4 employment for any of the following reasons:

5 ~~(A)~~

6 (i) The employee is physically or mentally unable to perform
7 his or her duties due to illness, injury, or a medical condition of
8 the employee.

9 ~~(B)~~

10 (ii) The absence is for the purpose of obtaining professional
11 diagnosis or treatment for a medical condition of the employee.

12 ~~(C)~~

13 (iii) The absence is for other medical reasons of the employee,
14 such as pregnancy or obtaining a physical examination.

15 (B) “Sick leave” includes paid sick leave as defined in Section
16 245.5.

17 (C) “Sick leave” does not include any benefit provided under
18 an employee welfare benefit plan subject to the federal Employee
19 Retirement Income Security Act of 1974 (~~Public Law~~ (P.L. 93-406,
20 as amended) and does not include any insurance benefit, workers’
21 compensation benefit, unemployment compensation disability
22 benefit, or benefit not payable from the employer’s general assets.

23 (c) ~~No~~ An employer shall *not* deny an employee the right to use
24 sick leave or discharge, threaten to discharge, demote, suspend,
25 or in any manner discriminate against an employee for using, or
26 attempting to exercise the right to use, sick leave to attend to an
27 illness of a child, parent, spouse, or domestic partner of the
28 employee.

29 (d) Any employee aggrieved by a violation of this section shall
30 be entitled to reinstatement and actual damages or one day’s pay,
31 whichever is greater, and to appropriate equitable relief.

32 (e) Upon the filing of a complaint by an employee, the Labor
33 Commissioner shall enforce the provisions of this section in
34 accordance with the provisions of Chapter 4 (commencing with
35 Section 79) of Division 1, including, but not limited to, Sections
36 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee
37 may bring a civil action for the remedies provided by this section
38 in a court of competent jurisdiction. If the employee prevails, the
39 court may award reasonable attorney’s fees.

(f) The rights and remedies specified in this section are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law.

SEC. 5. Section 234 of the Labor Code is amended to read:

234. An employer absence control policy that counts sick leave taken pursuant to Section 233 *or Article 1.5 (commencing with Section 245)* as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

SEC. 6. Article 1.5 (commencing with Section 245) is added to Chapter 1 of Part 1 of Division 2 of the Labor Code, to read:

Article 1.5. Paid Sick Leave

245. This article shall be known and may be cited as the Healthy Families, Healthy Workplaces Act of 2008.

245.5. For the purposes of this article, the following terms have the following meanings:

(a) "Department" means the Department of Industrial Relations.

(b) "Family member" means any of the following:

(1) A biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.

(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.

(8) A designated person for whom the employee may use paid sick leave to provide care. For the purposes of this paragraph, an employer shall allow each employee who has no spouse or registered domestic partner to designate a person for whom he or she may use paid sick leave to provide care. The employer shall provide the opportunity to make this designation no later than the date on which the employee has worked 30 hours after paid sick leave has begun to accrue. There shall be a 10-day period during

1 which the employee may make this designation. Thereafter, the
2 employer shall annually provide the employee a 10-day period
3 within which to make this designation or change a prior
4 designation.

5 (c) “Small business” means an employer who employs 10 or
6 fewer employees during 20 or more calendar workweeks in the
7 current or preceding calendar year.

8 (d) “Health care provider” has the same meaning as defined in
9 paragraph (6) of subdivision (c) of Section 12945.2 of the
10 Government Code.

11 (e) “Paid sick time” means time that is compensated at the same
12 wage as the employee normally earns during regular work hours
13 and is provided by an employer to an employee for the purposes
14 described in Section 246.5.

15 246. (a) An employee who works in California for seven or
16 more days in a calendar year is entitled to paid sick time as
17 specified in this section.

18 (b) (1) An employee shall accrue no less than one hour of paid
19 sick time for every 30 hours worked, beginning at the
20 commencement of employment or the operative date of this article,
21 whichever is first.

22 (2) An employee who is exempt from overtime requirements
23 as an administrative, executive, or professional employee under
24 any Wage Order of the Industrial Welfare Commission is deemed
25 to work 40 hours per workweek for the purposes of this section,
26 unless the employee’s normal workweek is less than 40 hours, in
27 which case the employee will accrue paid sick leave based upon
28 that normal workweek.

29 (c) An employee shall be entitled to use accrued paid sick time
30 beginning on the 90th calendar day of employment, after which
31 the employee may use paid sick time as it is accrued.

32 (d) Paid sick time shall be carried over to the following calendar
33 year. However, an employer may limit an employee’s use of paid
34 sick time as follows:

35 (1) A small business employer may limit an employee’s use to
36 40 hours or five days in each calendar year.

37 (2) All other employers may limit an employee’s use to 72 hours
38 or nine days in each calendar year.

39 (e) An employer is not required to provide additional paid sick
40 days pursuant to this section if the employer has a paid leave policy

1 and the employer makes available an amount of leave that satisfies
2 the accrual requirements of this section and that may be used for
3 the same purposes and under the same conditions as specified in
4 this section.

5 (f) (1) Except as specified in paragraph (2), an employer shall
6 not be required to provide compensation to an employee for
7 accrued, unused paid sick leave upon termination, resignation,
8 retirement, or other separation from employment.

9 (2) If an employee separates from and is rehired by the same
10 employer within one year, any previously accrued, unused paid
11 sick leave shall be reinstated. The employee shall be entitled to
12 use that accrued sick leave and to accrue additional sick time upon
13 rehiring.

14 (g) An employer may lend paid sick leave to an employee in
15 advance of accrual, at the employer's discretion and with proper
16 documentation.

17 246.5. (a) Upon the oral or written request of an employee,
18 an employer shall provide paid sick leave for the following
19 purposes:

20 (1) Diagnosis, care, or treatment of an existing health condition
21 of, or preventive care for, an employee or an employee's family
22 member.

23 (2) Leave related to domestic violence or sexual assault, as
24 described in Sections 230 and 230.1.

25 (b) An employer shall not require as a condition of taking paid
26 sick leave that the employee search for or find a replacement
27 worker to cover the days during which the employee is on paid
28 sick leave.

29 (c) For purposes of subdivision (c) of Section 233, there shall
30 be a rebuttable presumption of unlawful retaliation if an employer
31 takes adverse action against an employee within 90 days of any
32 of the following:

33 (1) The employee files a complaint with the department or in a
34 court alleging a violation of this article.

35 (2) The employee cooperates with an investigation or
36 prosecution of any alleged violation of this article.

37 (3) The employee opposes any policy, practice, or act that is
38 prohibited by this article.

39 247. (a) An employer shall give each employee written notice
40 of the requirements of this article in English, Spanish, Mandarin,

1 and any other language spoken by at least 5 percent of the
2 employees. The written notice must state the following:

3 (1) That employees are entitled to accrue, request, and use paid
4 sick time.

5 (2) The amount of paid sick time provided for by this article.

6 (3) The terms of use of paid sick time.

7 (4) That retaliation or discrimination against an employee who
8 requests and uses paid sick time is prohibited and that an employee
9 has the right under this article to file a complaint or bring a civil
10 action against an employer who retaliates or discriminates against
11 the employee.

12 (b) In each workplace, the employer shall display a poster in a
13 conspicuous place containing all the information specified in
14 subdivision (a). The department shall create these posters and make
15 them available to employers.

16 (c) An employer who willfully violates the notice and posting
17 requirements of this section shall be subject to a civil fine of not
18 more than one hundred dollars (\$100) for each offense.

19 247.5. Employers shall keep for five years records documenting
20 hours worked and paid sick leave accrued and used by employees.
21 Employers shall allow the department access to these records with
22 appropriate notice and at a mutually agreeable time to monitor
23 compliance with this article. Employers shall make these records
24 available to employees pursuant to Section 226. If an employer
25 does not maintain adequate records pursuant to this section, it shall
26 be presumed that the employee is entitled to the maximum number
27 of hours accruable under this article, unless the employer can show
28 otherwise by clear and convincing evidence.

29 248. The department is authorized and directed to coordinate
30 implementation and enforcement of this article and to promulgate
31 guidelines and regulations for those purposes.

32 248.5. (a) The department is authorized and directed to enforce
33 this article, including investigating an alleged violation, and
34 ordering appropriate temporary relief to mitigate the violation or
35 to maintain the status quo pending the completion of a full
36 investigation or hearing.

37 (b) If the department, after a hearing that affords due process,
38 determines that a violation has occurred, it may order any
39 appropriate relief, including reinstatement, back pay, the payment
40 of sick leave unlawfully withheld, and the payment of an additional

1 sum as an administrative penalty to each employee or person whose
2 rights under this article were violated. If paid sick leave was
3 unlawfully withheld, the dollar amount of paid sick leave withheld
4 from the employee multiplied by three, or two hundred fifty dollars
5 (\$250), whichever amount is greater, shall be included in the
6 administrative penalty paid to the employee. In addition, if a
7 violation of this article results in other harm to the employee or
8 another person, such as discharge from employment, or otherwise
9 results in a violation of the rights of an employee or another person,
10 the administrative penalty shall include fifty dollars (\$50) to each
11 employee or person whose rights under this article were violated
12 for each day or portion thereof that the violation occurred or
13 continued.

14 (c) Where prompt compliance by an employer is not
15 forthcoming, the department may take any appropriate enforcement
16 action to secure compliance, including filing a civil action. In
17 compensation to the state for the costs of investigating and
18 remedying the violation, the department may order the violating
19 employer or person to pay to the state a sum of not more than fifty
20 dollars (\$50) for each day or portion of a day a violation occurs
21 or continues for each employee or person as to whom the violation
22 applies. These funds shall be allocated to the department to offset
23 the costs of implementing and enforcing this article.

24 (d) An employee or other person may report to the department
25 a suspected violation of this article. The department shall encourage
26 reporting pursuant to this subdivision by keeping confidential, to
27 the maximum extent permitted by applicable laws, the name and
28 other identifying information of the employee or person reporting
29 the violation. However, the department may disclose that person's
30 name and identifying information as necessary to enforce this
31 article or for other appropriate purposes, upon the authorization
32 of that person.

33 (e) The department, the Attorney General, a person aggrieved
34 by a violation of this article, an entity a member of which is
35 aggrieved by a violation of this article, or another person or entity
36 acting on behalf of the public as provided for under applicable
37 state law, may bring a civil action in a court of competent
38 jurisdiction against the employer or other person violating this
39 article and, upon prevailing, shall be entitled to such legal or
40 equitable relief as may be appropriate to remedy the violation,

1 including reinstatement, back pay, the payment of any sick leave
2 unlawfully withheld, the payment of an additional sum as liquidated
3 damages in the amount of fifty dollars (\$50) to each employee or
4 person whose rights under this article were violated for each day
5 or portion thereof that the violation occurred or continued, plus,
6 if the employer has unlawfully withheld paid sick leave to an
7 employee, the dollar amount of paid sick leave withheld from the
8 employee multiplied by three; or two hundred fifty dollars (\$250),
9 whichever amount is greater; and reinstatement in employment or
10 injunctive relief; and further shall be awarded reasonable attorney's
11 fees and costs, provided, however, that any person or entity
12 enforcing this article on behalf of the public as provided for under
13 applicable state law shall, upon prevailing, be entitled only to
14 equitable, injunctive, or restitutionary relief, and reasonable
15 attorney's fees and costs.

16 (f) In any administrative or civil action brought under this article,
17 the department or court, as the case may be, shall award interest
18 on all amounts due and unpaid at the rate of interest specified in
19 subdivision (b) of Section 3289 of the Civil Code.

20 (g) The remedies, penalties, and procedures provided under this
21 article are cumulative.

22 249. (a) This article does not limit or affect any laws
23 guaranteeing the privacy of health information, or information
24 related to domestic violence or sexual assault, regarding an
25 employee or employee's family member. That information shall
26 be treated as confidential and shall not be disclosed to any person
27 except to the affected employee, or as required by law.

28 (b) This article shall not be construed to discourage or prohibit
29 an employer from the adoption or retention of a paid sick time
30 policy more generous than the one required herein.

31 (c) This article does not lessen the obligation of an employer to
32 comply with a contract, collective bargaining agreement,
33 employment benefit plan, or other agreement providing more
34 generous sick time to an employee than required herein.

35 (d) This article establishes minimum requirements pertaining
36 to paid sick time and does not preempt, limit, or otherwise affect
37 the applicability of any other law, regulation, requirement, policy,
38 or standard that provides for greater accrual or use by employees
39 of sick time, whether paid or unpaid, or that extends other
40 protections to employees.

1 249.5. This article does not apply to an employee covered by
2 a valid collective bargaining agreement if the agreement expressly
3 provides for the wages, hours of work, and working conditions of
4 employees, and expressly provides for paid sick days for those
5 employees, final and binding arbitration of disputes concerning
6 the application of its paid sick leave provisions, premium wage
7 rates for all overtime hours worked, and regular hourly rate of pay
8 of not less than 30 percent more than the state minimum wage rate.

O